SINGAPORE REPORTS.

REX v. TEO KIM CHOON.

[Orig. Crim. Juris. (Brown, J.) August 11, 1947]
[Singapore — Seventh Assizes Case No. 133 of 1947]

Penal Code, s. 494 — Bigamy — Validity of first marriage — Marriage of a Christian according to Chinese custom — Christian Marriage Ordinance (Cap. 82) — Civil Marriage Ordinance, 1940.

In this case the accused was charged with bigamy. He married his first wife in 1937 at the Hokkien Association, Kuala Lumpur, by Chinese custom. The accused was at the time of the Chinese Marriage a Christian.

Held, that by virtue of section 3 of the Christian Marriage Ordinance, which provides that any marriage solemnised otherwise than in accordance with such section shall be void, the 1937 ceremony was not a valid marriage and that the accused could not therefore be charged under s. 494 of the Penal Code.

CRIMINAL TRIAL.

Lim Koon Teck (D. P. P.) for the Crown.

A. J. Braga for the Accused.

Brown, J. : — The accused married his first wife in 1937 at the Hokkien Association Kuala Lumpur by Chinese custom. At that time there was no Civil Marriage Ordinance. The only relevant Ordinance relating to marriages, which was in force at that time, was the Christian Marriage Ordinance (Cap. 82), which has since been repealed and substituted by the Christian Marriage Ordinance, 1940. It is conceded that the accused, at the time of the Chinese marriage in 1937, was a Christian.

By section 3 of the repealed Christian Marriage Ordinance every marriage between persons, one or both of whom were Christians, had to be solemnized in accordance with section 4 of that Ordinance, and "any such marriage solemnized otherwise than in accordance with such section shall be void." Mr. Lim Koon Teck for the Crown contends that that only means void for the purposes of the Christian Marriage Ordinance, and that it does not override section 494 of the Penal Code which makes it an offence for a person to marry if such person has a husband or wife still living. In support of that contention he has referred to certain passages in *Craie's* Statute Law which state the principle that in order to alter any clearly established principle of law a distinct and positive legislative enactment is necessary. But section 3 of the repealed Christian Marriage Ordinance (Cap. 82) seems to me to be quite distinct, and I can see no reason to import into it the words "for the purposes of this Ordinance", which the section does not contain. It seems to me to be clear that, there being no Civil Marriage Ordinance in force at that time, the object of section 3 was to ensure that Christians should only be married in accordance with the procedure laid down by that Ordinance, and that a marriage performed under any other procedure, or by any racial or religious custom, should, in the case of Christians, be void.

In 1940 the Civil Marriage Ordinance was enacted and by section 5 (2) of that Ordinance "any person who has contracted a valid marriage under any law, religion, custom or usage" and who during the continuance of such marriage purports to marry under the Civil Marriage Ordinance is to be deemed to have committed the offence of bigamy. The 1937 ceremony would have been a valid marriage under Chinese custom if section 3 of the repealed Christian Marriage Ordinance had not made it void for the reason that the accused was a Christian.

I therefore rule that the 1937 ceremony was not a valid marriage.

Ruling Accordingly.

THIANG MUOI v. REX.

[App. Crim. Juris. (Brown, J.) September 2, 1947]
[Singapore — Magistrate's Appeal No. 54 of 1947]

Criminal Procedure — Statement of accused brought out in answer to question to witness — Public lottery — Expert evidence.

In this case an Inspector of Police in giving evidence was asked the question "Whose room is this?" In his answer the witness gave a reply about something which the accused had told him. The accused was undefended by Counsel. The Magistrate convicted on two grounds (1) that cash and documents were lying on the table at which the accused was sitting and (2) the Inspector's answer to the question: "Whose room is this?"

Held, that as the witness had not confined himself to answering the question and had introduced a matter which he was not being asked about, the answer was unsatisfactory and that therefore the conviction of the accused made mainly on that evidence could not be sustained.

Case referred to :—

(1) *Lee Seow Kuan v. Rex* (1940) M.L.J. 211.

MAGISTRATE'S APPEAL.

C. H. Koh for the Appellant.

Lim Koon Teck (D. P. P.) for the Respondent.

Brown, J. : — Upon the first ground which has been argued I do not think that the appellant's contention can succeed. An examination of the evidence of Foo Ah See and Exhibit which he put in seems to me to shew that *Chap Ji Kee* is a game